

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

OSCAR PEREZ-MARQUEZ,
Petitioner,
v.
JO GENTRY, et al.,
Respondent

Case No. 2:17-cv-01501-RFB-BNW

ORDER

Following upon the court's minute order of October 4, 2021 (ECF No. 104);

IT THEREFORE IS ORDERED that petitioner file the third amended petition within 14 days of the date of entry of this order.

IT FURTHER IS ORDERED that respondents' motion to dismiss (ECF No. 81) is **DENIED** as moot without prejudice to renewing the motion as a response to the third amended petition.

IT FURTHER IS ORDERED that respondents must file a response to the third amended petition, including potentially by motion to dismiss, within 60 days of entry of this order and that petitioner may file a reply within 30 days of service of an answer. The response and reply time to any motion filed by either party, including a motion filed in lieu of a pleading, will be governed instead by Local Rule LR 7-2(b).

IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the petition must be raised together in a single consolidated motion to dismiss. In other words, the

1 court does not wish to address any procedural defenses raised herein either in serial fashion in
2 multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted
3 from such motion to dismiss will be subject to potential waiver. Respondents must not file a
4 response in this case that consolidates their procedural defenses, if any, with their response on the
5 merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking
6 merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they must
7 do so within the single motion to dismiss not in the answer; and (b) they must specifically direct
8 their argument to the standard for dismissal under § 2254(b)(2) set forth in Cassett v. Stewart, 406
9 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, may be
10 included with the merits in an answer. All procedural defenses, including exhaustion, instead must
11 be raised by motion to dismiss.

12 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents must
13 specifically cite to and address the applicable state court written decision and state court record
14 materials, if any, regarding each claim within the response as to that claim.

15 DATED: October 15, 2021



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17 RICHARD F. BOULWARE, II
United States District Judge
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